

General Information Letter: Dock sales are sourced to the state in which the buyer is located, even when the buyer itself picks up the tangible personal property.

November 3, 2003

Dear:

This is in response to your letter dated October 21, 2003 in which you request a general information letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

Facts

ABC manufactures various products, consisting of tangible personal property. ABC manufactures its products in six states, including California, Georgia, North Carolina, Ohio, Texas, and Wisconsin. ABC's products are shipped from its manufacturing facilities in these states to distributors located in Illinois and other states. There are three methods of shipment or delivery of the products to the distributor's Illinois facilities:

the Illinois distributor picks-up the products from the ABC manufacturing facility in one of the six states and transports the products in the distributor's vehicles to the distributor's Illinois facilities;

the Illinois distributor arranges with common or contract carriers to pick-up the products from the ABC manufacturing facility in one of the six states and deliver the products to the distributor's Illinois facilities;

ABC arranges with common or contract carriers for shipment of the products to the distributor's Illinois facilities.

Issue

Given the facts described above, how would ABC compute its sales factor numerator for its Illinois income tax return with respect to the sales of tangible personal property to Illinois distributors under the three methods of pick-up and delivery of ABC's products?

Ruling Request

According to 86 Ill. Adm. Code Section 100.3370(c)(1)(A)(i), a sale of tangible personal property is in Illinois, if the property is delivered or shipped to a purchaser within Illinois regardless of the f.o.b point or other conditions of sale.

Pursuant to this provision:

under Method 1, ABC's sales of products which are picked up by the purchaser outside Illinois, using its own vehicles, would not be included in the numerator of the sales factor, even if the purchaser brings the products directly into Illinois;

under Method 2, if the purchaser arranges for a common or contract carrier to make the pick-up from ABC's manufacturing facilities outside Illinois and for delivery of the products to the Illinois facilities of the purchaser, these ABC sales would be excluded from the numerator of the sales factor;

under Method 3, if ABC arranges for a common or contract carrier to deliver products to the purchaser's facilities within Illinois, these product sales of ABC would be included in the numerator of the sales factor.

Based on the above information we respectfully request that the Department issue a general information letter in response to our request. I appreciate your efforts in providing an expedited response.

RULING

Section 304(a)(3)(B)(i) of the Illinois Income Tax Act (35 ILCS 5/304(a)(3)(B)(i)) provides that sales of tangible personal property are in Illinois if the property is delivered or shipped to a purchaser, other than the U.S. government, within this State, regardless of the f.o.b. point or other conditions of sale. See 86 Ill. Adm. Code § 100.3370(c)(1). The language of IITA Section 304(a)(3)(B)(i) is identical to that of Section 16(a) of the Uniform Division of Income for Tax Purposes Act (UDITPA). Section 16(a) of UDITPA was incorporated as article IV of the Multistate Tax Compact. The Official Commentary on the Illinois Income Tax Act states:

Article 3 of the Act provides rules for the allocation and apportionment of business income and non-business income between Illinois and other states. For the most part this is accomplished by embodying ... the principles of the Multistate Tax Compact which was adopted by Illinois effective July 1, 1967.... Adoption of the provisions of the Compact was believed desirable in the interests of interstate uniformity and consistency with existing Illinois law. (Caterpillar Tractor Company v. Lenckos, 84 Ill. 2d 102, 177 (1981), quoting OFFICIAL COMMENTARY ON THE ILLINOIS INCOME TAX ACT)

The majority of courts in UDITPA-based states hold that the term "within this state" in the sales factor for tangible personal property modifies the term "purchaser," rather than the term "delivered." For example, in McDonnell Douglas Corp. v. Franchise Tax Board, 26 Cal. App. 4th 1789 (Cal. Ct. App. 1994), the court held that Section 25135(a) of the California tax law should be read as imposing a "destination" rule, rather than a "place of delivery" rule, in computing the California sales factor. The court reasoned that the destination rule advanced the purpose of the sales factor to reflect the contribution of the consumer states to the production of income, and also promoted the goal of UDITPA to ensure uniformity among states in taxation matters. The court noted that a majority of courts in other UDITPA-based states held the same. Department of Revenue v. Parker Banana Co., 391 So.2d 762 (Fla. Ct. App. 1980); Pabst Brewing Co. v. Wis. Dept. of Revenue, 387 N.W. 2d 121 (Wis. Ct. App. 1986); Olympia Brewing Co. v. Com'r of Revenue, 326 N.W. 2d 642 (Minn. 1982); Lone Star Steel Co. v. Dolan, 668 P.2d 916 (Col. 1983); Texaco, Inc. v. Groppo, 574 A.2d 1293 (Conn. 1983) ("the uniform holding of courts in other states interpreting essentially identical language has been that the destination of goods, and not their delivery point is dispositive." Id. at 1297)); Strickland v. Patcraft Mills, Inc., 302 S.E.2d 544 (Ga. 1983); Revenue Cabinet v. Rohm & Hass Kentucky, Inc., 929 S.W.2d 741 (Ky. Ct. App. 1996) ("[W]e fail to perceive any valid reason why

Kentucky, when interpreting the applicable Kentucky statutes, should adopt a minority view which is inconsistent with the destination rule uniformly adopted by other states.” Id. at 745)).

Consistent with the purpose of the sales factor, and to promote the goal of uniformity among UDITPA states, the same “destination” rule shall apply for purposes of IITA Section 304(a)(3)(B)(i). Therefore, even though a taxpayer’s customer may receive physical possession of the property outside Illinois, a sale may nonetheless constitute an Illinois sale where the destination of the property sold is Illinois. (See Cal. Franch. Tax Bd. Legal Ruling 95-3 (July 20, 1995) (“[I]f physical possession of goods is transferred by a seller to a purchaser in another state and the goods are taken by the purchaser into California to its place of business in this state, the sale is a California sale unless the seller is not taxable in this state. Because, in such a case, the property would not have been delivered in California, to be a California sale, the property must therefore have been ‘shipped’ to meet the conditions of Section 25135(a). Thus, to be consistent with the [McDonnell Douglas Corp.] holding, transportation by the purchaser, inclusive of transporting mobile property under its own power, must be considered ‘shipment’ to the purchaser within this state.”))

In this case, with respect to each of the pick-up and delivery methods you have described, the destination of the goods sold remains the purchaser’s Illinois place of business. Since it is the destination of the sale rather than the method of pick-up and delivery that is dispositive of the Illinois sales factor, in each of the situations described in your ruling request the product sales of ABC must be included in the numerator of the Illinois sales factor.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department’s web site at www.ILtax.com.

Sincerely,

Brian L. Stocker
Associate Counsel